

**THE McDANIEL LAW FIRM, PC**

54 MAIN STREET  
HACKENSACK, NJ 07601  
(201) 845-3232  
(201) 845-3777 FAX

WWW.MCDLAW.US

EMPIRE STATE BUILDING  
350 FIFTH AVENUE, 59<sup>TH</sup> FLOOR  
NEW YORK, NY 10118  
(212) 514-8080  
(212) 514-8282 FAX

JAY R. MCDANIEL  
ADMITTED IN NJ & NY  
JRMCDANIEL@MCDLAW.US

PLEASE REPLY TO  
NEW JERSEY OFFICE

October 1, 2012

**VIA ECF**

Hon. Patricia Shwartz, U.S.M.J.  
United States District Court  
Martin Luther King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

Re: Amselfilm Productions v. SWARM #BB012 and John Does 1-997  
Civil Action No.: 2:12-cv-3864

Dear Judge Shwartz:

Plaintiff Century Media, Ltd. respectfully submits this letter memorandum in lieu of a brief in opposition to the motion of an anonymous defendant (**ECF Document No. 10**) in the above-captioned matter seeking to proceed anonymously. Movant's application seems styled as a motion to quash a subpoena issued to an Internet Service Provider (ISP), dismiss the suit against the Movant, and sever the Doe Defendants.

The Movant seeks to proceed anonymously, it seems, to prevent disclosure of his or her identity to Plaintiff. However, Movant's identity would still be revealed to our office, but not be made known publicly, even if Movant's request was granted. We have no objection to such an arrangement, but note that Movant's application cannot shield his identity and prevent him or her from being involved in this litigation.

Moreover, Movant's application is deficient and Plaintiff stands on its rights under the Federal Rules of Civil Procedure. A motion must be supported by facts asserted in an affidavit or declaration. Unless the assertion of fact is under oath or subject to penalty of perjury, it must be ignored.

A few points should be noted, however.

Hon. Patricia Shwartz, U.S.M.J.

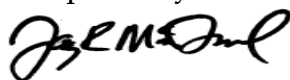
October 1, 2012

Page 2

- The assertion that the case is without factual basis is false. This case seeks injunctive and monetary relief as a result of the illegal distribution of a single copy of the copyrighted work "Bablo" by the Swarm and its operators. Each putative defendant has been identified as a member of the Swarm and a portion of the work was downloaded from a computer connected to the Internet from that account.
- This firm has never dunned any defendant, nor even initiated telephone contact unless we were first contacted and were responding to a request that we call. We send demand letters that are accurate and fair. We do not harass or retaliate, and we respect the potential defendants' rights to deny the claims and proceed to discovery and trial. (On the other hand, defendants having been documented distributing a pirated copy of the work from their Internet account, there is little probability of mounting a meritorious defense.)
- The procedures used by to identify the Doe Defendants represent the industry standard and are accurate and reliable. They conform in all material respects to the standards of the Motion Picture Association of America and the Recording Industry of America for torrent monitoring and documentation of illegal distribution.
- Any argument that relies on a lack of personal jurisdiction must fail at this juncture, as Plaintiff has not and cannot serve process on any of the Doe Defendants until their personal information is obtained. Plaintiff can only obtain personal jurisdiction over any of the Doe Defendants through service of process – arguing that personal jurisdiction is lacking before process is served is incongruous.

In the event that that this or any other Movant makes an application based on facts that are actually within their own experience and knowledge, we are prepared to submit appropriate opposition on the merits. This application, however, fails to meet the most basic requirement of the Federal Rules of Civil Procedure and must be summarily denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay R. McDaniel", written in a cursive style.

Jay R. McDaniel